S.B. CIVIL WRIT PETITION NO.6466/1992

Smt. Chhagan Kumari Vs. The State of Raj. & Ors.

Date : 07.09.2006

HON'BLE MR. JUSTICE RAJESH BALIA

Mr. Sanjay Mathur for the petitioner.
Mr. L.R. Upadhyay, Addl. Government Advocate.

Heard learned counsel for the parties.

This petition is directed against the order dated 17.9.1992 rejecting the application for renewal of the mining lease in favour of the petitioner inter alia on the ground that 'no objection certificate' about the operation of aforesaid mining from the Forest Department has not been obtained. The order passed by the Mining Department has been made subject matter of the writ petition. Ordinarily this order ought to have been subjected to appeal before the State Government or revision before the Central Government as the case may be. Be that as it may, the petition was admitted and after hearing both the parties, the following interim order was passed on 11.2.1993 by this Court :-

"Heard learned counsel for the parties.

The petitioner, if he is still in possession of the lease area, will not be dispossessed from the leased area till further orders. However, he will abide by the following conditions in excavating the minerals from the mines:-

A. The lessee shall keep its working restricted to the area which falls outside the forest area shown in Ann-R-3 and will not clear the forest till the requisite permission from the Central Govt. Under the Provisions of the Forest (Conversation) Act, 1980 is received for working additional area within the lease hold. Meanwhile, the lessee will be liable to pay dead rent for the whole of the lease area.

B. The lessee shall restore the worked out area of the lease hold to the satisfaction of the Director of Mines & Geology and shall grow such trees and plaints and in such number over the land so restored as may be decided by the Director of Mines & Geology.

C. The lease will be liable to be determined if the lessee violates condition (A) or (B) at any time.

D. The lessee shall regularly pay the lease money and dead rent etc. As per rules."

Apparently, the aforesaid order was passed keeping in view the spirit of the order Annex.13 that no mining operation may be carried on in the demarcated forest area as per Annex.R/3 document produced by the respondent in support of order Annex.13.

Since then many changes have taken place in the matter of grant of mining lease and therefore, it will be inappropriate to make any specific direction at this juncture in favour or against the petitioner. It is just and proper to leave the matter to be decided by the authority concerned after taking into consideration the existing rules and instructions about the permission of mining operations in or around the forest area and subject to necessary approvals of Central Government if the area in

question falls within the reserved forest area. Moreover, the impugned order appears to have been passed by over looking the fact that the mining lease are not granted for indefinite period and are required to be renewed from time to time under the Rules as may be be in force from time to time.

In these circumstances, this petition is disposed of with the direction that the petitioner may make appropriate application for renewal of mining lease before the competent officer, if he is desirous of continuing with mining lease. The competent officer on receipt of such application shall decide the same within two months, thereafter. Such application shall be moved before the concerned authority within a period of 6 weeks. The period of deciding that application will be within two months which will commence from the date of filing of the application. Until the decision of the renewal application, if filed within the time allowed, the interim order dated 11.2.1993 with its terms and conditions shall remain in operation.

No order as to costs.

[RAJESH BALIA], J.

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